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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 LIANHE ZHOU, on behalf of  
4 himself and others similarly  
situated,

5 Plaintiffs,

New York, N.Y.

6 v.

17 Civ. 1938(RMB)

7 LEGEND 72, LLC, d/b/a Legend  
8 72 Upper Westside, SIXHI LI,  
a/k/a Salmon Li, et al.,

9 Defendants.

10 -----x

11 July 20, 2017  
12 9:15 a.m.

13 Before:

14 HON. RICHARD M. BERMAN,

District Judge

15 APPEARANCES

16 TROY LAW, PLLC  
17 Attorneys for Plaintiffs  
18 BY: KIBUM BYUN

19 LAW OFFICE OF MATTHEW C. HEERDE  
Attorneys for Defendants  
20 BY: MATTHEW CHARLES HEERDE  
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THE COURT: How are you all?

MR. BYUN: Good morning, your Honor.

MR. HEERDE: Good morning, your Honor.

THE COURT: So, please be seated.

OK. What's going on here?

MR. BYUN: Good morning, your Honor. This is Kibum  
Byun of Troy Law for plaintiffs.

THE COURT: This is a restaurant on the Upper West  
Side, right?

MR. BYUN: Yes, your Honor, Upper West Side.

THE COURT: So, I'm sorry, I didn't mean to interrupt.

MR. BYUN: Yes. Plaintiffs brought this action  
pursuant to the Fair Labor Standards Act. Plaintiff also  
brought this action seeking a certification of an FLSA  
collective pursuant to 216(b) of the statute.

THE COURT: Right. I wanted to explore today if there  
is a possibility that you are going to resolve this case, or is  
this waiter or a chef or --

MR. BYUN: Plaintiff -- there is one named plaintiff  
here -- was a cook at the restaurant.

THE COURT: And for what time period?

MR. BYUN: He was a plaintiff during -- it was in  
2015, January, to February 19, 2016, your Honor.

THE COURT: OK. So, all right. So, where are we

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1 heading here in this case?

2 MR. BYUN: Plaintiff seeks to conditionally certify  
3 all nonexecutive employees at the restaurant.

4 THE COURT: Right. I get that.

5 Counsel, is this a case that you are all trying to  
6 resolve or are we heading for motions or what?

7 MR. BYUN: Plaintiffs have reached out to defendants'  
8 counsel to stipulate to this issue, but we could not reach an  
9 agreement, your Honor.

10 MR. HEERDE: Frankly, I don't recall being contacted  
11 about resolution, your Honor. That is something that we are  
12 always willing to explore.

13 Certainly, given the potential liability in cases like  
14 this, not that it exists here, but I don't believe that there  
15 has been much substantive discussion about settlement yet, your  
16 Honor.

17 THE COURT: I'll tell you what we will do. We are  
18 going to break for a couple of minutes. You guys can use the  
19 jury room and talk about where you think it's going and if we  
20 are going to have motion practice, in what timeframe, etc.,  
21 etc., and then you will come back and then we will talk some  
22 more.

23 MR. HEERDE: Yes, your Honor.

24 MR. BYUN: Yes, your Honor.

25 THE COURT: And talk about whether there is a possible

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1 resolution here or whatever.

2 MR. HEERDE: Certainly.

3 THE COURT: Great. Thank you.

4 I think that door is open under the clock.

5 MR. HEERDE: OK.

6 (Recess)

7 THE COURT: So, how did you make out? Please be  
8 seated.

9 MR. HEERDE: Your Honor, with respect to the proposed  
10 motion, we would propose that by a week from tomorrow, the end  
11 of next week, plaintiff will submit or apprise my office of  
12 what evidence they think they have to justify certification,  
13 and then within two weeks we will either -- if we don't stip to  
14 certification within two weeks, then we would file a briefing  
15 schedule on whatever three weeks from tomorrow is.

16 THE COURT: Got you. So you will give evidence to  
17 him, to you, plaintiff will give, and then you will look it  
18 over for a period of two weeks?

19 MR. HEERDE: Yes.

20 THE COURT: So, wait a minute. Today is --

21 MR. HEERDE: So that would make it due July 28th.

22 THE COURT: Evidence would be -- no, would be due  
23 August 4 -- 3, I think.

24 MR. HEERDE: We had agreed on a week from tomorrow.

25 THE COURT: Oh, just a week?

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1 MR. HEERDE: Yes.

2 THE COURT: OK. The 28th.

3 MR. HEERDE: Two weeks to confer from that.

4 THE COURT: When would you let me know which way you  
5 are going?

6 MR. HEERDE: August 11th.

7 THE COURT: You can do this by letter, by the way.

8 MR. HEERDE: Understood, your Honor.

9 THE COURT: If it did turn into motion practice, how  
10 long would it take you to put that together, do you think? I  
11 mean, the motion -- your motion, yes.

12 MR. BYUN: Plaintiff proposes two weeks for plaintiffs  
13 to file the motion, two weeks --

14 THE COURT: Two weeks from when?

15 MR. BYUN: Two weeks -- if there is a briefing  
16 schedule, two weeks from the day when we file the briefing  
17 schedule for the motion.

18 THE COURT: So two weeks from August 11th?

19 MR. BYUN: Yes.

20 THE COURT: So that's the 25th.

21 MR. BYUN: Yes. And two weeks for defendants to  
22 oppose and one week for plaintiff to reply, if any.

23 THE COURT: So the 8th is your response, your  
24 opposition, if there were one, is that right?

25 MR. HEERDE: That works for us, your Honor.

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1 THE COURT: Is that what you --

2 MR. HEERDE: We hadn't gotten that far in the jury  
3 room.

4 THE COURT: All right. So that's September 8th.  
5 And then for any reply, the 15th. How is that?

6 MR. BYUN: Yes, your Honor.

7 THE COURT: September 15.

8 And I take it this is something you could do on  
9 submission without oral argument, or do you need oral argument?

10 MR. BYUN: I think the motions can be decided by paper  
11 only.

12 MR. HEERDE: If it is OK with your Honor, I prefer not  
13 to decide on that just yet.

14 THE COURT: OK.

15 MR. HEERDE: I haven't seen the evidence. I haven't  
16 talked with my clients. They haven't seen the evidence.

17 THE COURT: That is fair enough.

18 MR. HEERDE: Thank you.

19 THE COURT: All right. So that will get us started.  
20 Great. Nice to see you.

21 MR. BYUN: Thank you, your Honor.

22 MR. HEERDE: Thank you, your Honor.

23 (Pause)

24 THE COURT: Your proposal of how you are going to deal  
25 with this motion I think makes a lot of sense. So, thanks.

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1 MR. BYUN: Yes, your Honor.

2 MR. HEERDE: Thank you, your Honor.

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